



Chino Mines Company
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October 19, 2009

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Ms. Marcy Leavitt, Director
New Mexico Environment Department
Water and Waste Management Division
P.O. Box 5469
Santa Fe, New Mexico 87502

Dear Ms. Leavitt:



**Re: Administrative Order on Consent Extension Request
for Lampbright IU per Article XIV and Article XII.J Potential Inconsistency
with Other Requirements: Second Written Request for Meeting
to Discuss Possible Modification of the Order to Address Duplicative Requirements**

Freeport-McMoRan Chino Mines Company (Chino) received New Mexico Environment Department's (NMED's) August 17, 2009 letter requesting that Chino submit a remedial investigation (RI) proposal for the Lampbright Investigation Unit (IU) by October 17, 2009. Chino requests an extension for the RI proposal per Article XIV of the Administrative Order on Consent (AOC) in order to discuss with the NMED permit overlaps and timeline issues to determine in what way the AOC can address the site. The NMED letter has not addressed the requirements of Article XII.J in its determination that an RI under the AOC is necessary over Chino's objections and without meaningful technical discussions. Chino's June 26, 2009 letter is a written request for a meeting with NMED to discuss requirements that Chino deems inconsistent with the AOC. This request, which was submitted to NMED in accordance with *Article XII.J. Potential Inconsistency with Other Requirements* of the AOC, was not addressed in NMED's August 17, 2009 letter.

Article XII.J. Potential Inconsistency with Other Requirements states:

"The Parties recognize that the requirements of laws and regulations applicable to Chino, including Chino's Discharge Plans and requirements under the New Mexico Mining Act, and other statutes and regulations could lead to obligations inconsistent with this AOC. Given this possibility, **NMED agrees to meet with Chino upon written request when any such requirements are deemed by Chino to be inconsistent with the AOC to discuss possible modification of this AOC consistent with the Parties' desire not to subject Chino to requirements duplicative or inconsistent with the requirements herein**". (emphasis added).

This language requires NMED to meet and discuss Chino's concerns about the redundancies with existing operational discharge permits and DP-1340 and the scope of any remedial investigation activities, and to find a way to avoid subjecting Chino to requirements that are inconsistent with or duplicative of other requirements that Chino must meet. The need for a meeting is reflected in NMED's conclusions in its August 17, 2009 letter, which Chino identified as inaccurate:

- **"1) operational areas do not exist within the LIU".**

The Lampbright IU is described in the AOC statement of work as including the following:

- Tributary 1 and Lampbright Draw Channel down gradient from Reservoir 8,
- Lampbright North Cut Diversion on the north boundary of the Lampbright leach pile and
- Tributary 2 and any other tributaries to Lampbright Draw down gradient of leach pile or diversion.

Lampbright Draw Channel down gradient from Reservoir 8. This area is clearly operational and Chino has been working with the NMED Ground Water Quality Bureau to implement significant abatement actions. Condition 10 of DP-376 (May 14, 2004) required that Chino synthetically line the storm water ponds and conveyances connecting the ponds to each other and to Reservoir 8. These upgrades included replacing the previous unlined pond with a stainless steel tank, constructing a lined overflow pond, and improving the electrical and pumping capability.

Chino submitted the *Site Wide Stage 1, Task 1 Addendum: Surface Water and Vadose Investigation Report for Characterization of Intermittent Base Flow Along Lampbright Tributary 1* to NMED on October 12, 2009. This report summarizes Chino's investigation to characterize shallow alluvial groundwater, its surface expression, and surface sediment for Lampbright Tributary 1 (Tributary 1) from below SBR8 (a sediment check dam and sump) to the confluence with Tributary 2. Two conclusions of this report that are relevant to the AOC are:

- Concentrations of regulated constituents in shallow alluvial water and its occasional surface expression are low and generally within standards and
- Surface sediment downstream of SBR8 exhibits low total metals concentrations, low leachable metals concentrations, and no potential to generate acid.

NMED is currently reviewing Chino's renewal application for DP-376, which was submitted on January 14, 2009. Also, as previously disclosed by Chino to NMED, Chino is also evaluating plans for placing mine waste rock in the Southwest Lampbright pipeline corridor.

North Cut Diversion. The Lampbright Leach Facility is comprised of the Main Lampbright Stockpile, the South Lampbright Stockpile, and the Southwest Lampbright Stockpile. Chino has implemented several abatement activities under DP-376, including constructing the North Cut Diversion to route un-impacted storm water in the early 1990's and the construction of Sump 3 and an interceptor trench at the northeastern toe of the Main Stockpile to replace an improperly functioning sump.

A pregnant leach solution (PLS) spill occurred at Chino in late October 2007. The release, which originated in the Northeast Lampbright Booster Sump, resulted in PLS overflowing first into the North Cut Diversion, then through storm water outfall SWLB-1 and flowing almost 3 miles down Tributary 2 ending just before the confluence with Tributary 1. Chino implemented a comprehensive corrective action program under DP-376 that was approved by NMED. This corrective action and the investigation that followed documented that there were no impacts to sediment beyond the confluence of Tributaries 1 and 2. Any possible "historic" sediment impact identified in the AOC statement of work has been subsumed by the October 2007 spill and subsequent clean up. Chino submitted the *Corrective Action Completion Report, Discharge of Pregnant Leach Solution to Tributary 2, Lampbright Draw, New Mexico* to NMED on August 29,

2008 and NMED approved it on September 25, 2008. NMED is currently in the process of adding the post-corrective action monitoring requirements to DP-376.

Post-corrective action monitoring is ongoing to monitor the residual impacts to sediment and surface water, and the impacts to groundwater in the northern part of Tributary 2. The objectives of the monitoring are to document that the residual impacts continue to diminish as expected, and to confirm that the upward groundwater gradients in the northern part of Tributary 2 are confining impacts to the channel axis and water table in the bedrock. The post-corrective action monitoring will generally cover the period from January 2009 to September 2010. Chino has agreed to provide the NMED manager assigned to DP-376 a presentation of interim results of the monitoring in late 2009. A follow up monitoring report will be submitted to NMED approximately three months after the last sampling event (by December 2010). In its comments on Chino's Site Wide Stage 1 Abatement Final Investigation Report (July 17, 2008), NMED required Chino to evaluate abatement options for the ground water contamination in the northern reaches of Tributary 2 as part of the upcoming Stage 2 Abatement Plan under DP-1340.

Tributary 2 and any other tributaries to Lampbright Draw down gradient of leach pile or diversion. The tributaries to Lampbright Draw down gradient of the leach stockpile and division are Tributary 1, 2 and 2A. Tributary 1 and 2 are discussed above. Tributary 2A was not included in the Tributary 2 Spill Corrective Action; however, this drainage was sampled under the AOC Background Report (Chino 1995). The 1995 data for Tributary 2A include six samples, all of which have extremely low concentrations of copper within the range of background.

Reservoir 5. Chino submitted the *Site Wide Stage 1, Task 1 Addendum: Surface Water and Vadose Zone Investigation Report for Characterization of the Reservoir 5 Area* to NMED in February 2009. This report summarizes Chino's investigation into mine-related materials in the Reservoir 5 Area, including waste rock and sediment. Reservoir 5 is hydraulically upgradient of the Santa Rita Pit and within the pit's capture zone for groundwater. Surface water and sediment are retained in Reservoir 5 and have no physical pathway to Lampbright Tributary 2.

SX/EW Plant Area. This area is part of current operations, and any potential impacts are covered by operational permits and the closure permit DP-1340. The requirement for analysis for organic chemicals that may be associated with raffinate would be premature given that the plant will continue to operate for years. The appropriate time to evaluate impacts from organics to soil, if any, is at the time of closure.

- ***"2) corrective action conducted pursuant to DP-1340 requirements in the LIU includes only limited sampling to investigate potential ground water contamination in response to the Tributary 2 spill".*** As detailed above, this statement is inaccurate. The corrective action in response to the Tributary 2 release addressed surface water and sediment, in addition to ground water. The vadose zone investigation for Tributary 1 evaluated baseflow, groundwater, and sediment. The operational units regulated under DP-376 will be addressed under closure, including the North Cut Diversion and PLS collection structures.
- ***"3) the scope of the AOC may include operational areas as stated in Article II.A, if the media is not being addressed by a DP."*** While Chino acknowledges that the scope of the AOC is broader than the discharge permits, Lampbright does not present the same historic contamination concerns as the Hurley smelter or the impacts from the operation of the former precipitation plant and it is premature to implement any remedial investigation or cleanup activities under the AOC. The SX/EW Plant and leach stockpiles are still active and some areas described in the AOC statement of work may be covered by waste rock in the future.

Chino continues to disagree with NMED's interpretation of the Lampbright IU boundaries. The sections NMED is requiring investigation as part of the Lampbright IU extend west along the northern AOC boundary and are bounded by State Highway 152 and mine operations. There is no technical basis to extend the boundaries beyond the areas of interest identified in the statement of work. Additionally, these areas outside of the statement of work were incorporated into the AOC boundary to produce a clear distinction between Chino and Cobre Operations and holdings. Prior to the initial placement of waste rock in 1973 there were no industrial activities or anthropogenic wastes in the Lampbright IU. It is important to note that the Main Lampbright stockpile was subject to a discharge permit in 1985, less than ten years after leaching operations began. The original operational discharge permit and subsequent renewals combined with the supplemental closure/closeout permit essentially regulate leaching activities at Lampbright from cradle-to-grave. For example, unlike the Hurley Soils Investigation Unit where the former concentrator and smelter operated before there were environmental regulations, there were no historic mining activities in the Lampbright area to leave legacy contaminants. The North Cut Diversion was not even constructed until the early 1990's.

Based upon the structure of the AOC to avoid duplicate efforts and highlighted on page 6 of the Statement of Work, there is a direct overlap and duplication between Sitewide Abatement and the AOC for this area. Both the AOC and NMED's Groundwater Standards address ecological risk associated with surface water and, while sediment exposure is not directly called out in the WQCC standards, it is directly related to surface water quality and thus is included in the Tributary 1 and 2 work conducted to date under the Sitewide Abatement Stage 1 Plan and the Corrective Action for DP 376.

Based upon data collected for the Lampbright IU, including the 1995 Background Remedial Investigation (RI) as well as Tributary 1 under the Sitewide Abatement Stage 1 Plan and Corrective Action for Tributary 2, there is little to no human health or ecological risk for this IU. Background RI, Tributary 1, and Tributary 2 sediment samples were compared to preliminary remediation goals (PRGs) summarized in the Final Hanover/Whitewater Creek IU Human Health Risk Assessment. Since Lampbright Stockpile is an operational area, a trespasser may not use the active channel of Tributary 1 or 2/2A for hiking or hunting. There are no exceedances of trespasser PRGs for any samples. Based on this screening level assessment, there is no significant risk to human health at Lampbright IU.

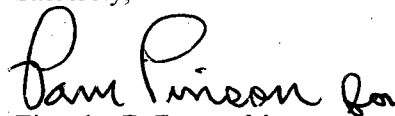
In addition to human health, metal concentrations in sediment were compared to ecological decision criteria. These criteria were presented in NMED's Final Site-Wide Ecological Risk Assessment (MFG 2005). Decision criteria are not cleanup levels or remedial action goals, nor do they trigger the need for response actions, but they are used in a remedial investigation to focus investigative efforts on those issues or areas that warrant additional evaluation. While Chino does not entirely embrace the use of these criteria for the purposes of estimating ecological risk, they were used in order to be consistent with previous analyses and to provide context for Lampbright IU. Based on the analysis, there are very few exceedances of the decision criteria (probable effect concentrations (PECs)). In addition, seep/spring data were compared to acute and chronic New Mexico Water Quality Criteria with very few exceedances. Most notably, seep 2401 has exceedances but this seep has already undergone interim corrective measures. Based on this analysis, it is unlikely that there is significant ecological risk at Lampbright IU. The Tributary 1 Surface Water and Vadose Zone Investigation and DP 376 Corrective Action for Tributary 2 indicate that conditions are the same or improving compared to the 1995 Background RI. A technical memorandum summarizing this information can be submitted as an addendum to this letter.

As described above, the Site-Wide Stage 1 Abatement Plan process is further along than the AOC and, therefore, is the appropriate administrative vehicle to address AOC issues for Lampbright Draw tributaries. Non-operational areas outside of the tributaries within the IU may also have to be addressed under DP 1340 due to having to wait for cessation and closure of leaching operations. Chino's request for a meeting is to discuss any issues NMED may have regarding using one program to regulate this area of

the site, to discuss characterization of the soil covered drainage areas above these tributaries under the AOC or DP 1340, and to discuss the appropriate IU boundary. As described in the Site-Wide Stage 1 Abatement Plan, Lampbright Stockpile Area is an operational area and based upon the preliminary screening described above, there is little risk for either human or ecological receptors based upon the surface water and sediment samples collected within Tributary 1, 2 and 2A. The AOC contemplates the possibility that areas addressed by the agreement may have overlaps that prevent the efficient execution of the CERCLA process. NMED should recognize that site conditions have evolved since the AOC was signed and that the Lampbright IU has the possibility to be addressed mostly or entirely under DP-1340 and its Site-Wide Stage 1 Abatement Plan.

Chino looks forward to discussing this further with NMED and proposes a meeting date during the week of November 2, 2009. Please contact Mr. Ned Hall at (520) 229-6470 or Ms. Pam Pinson at (575) 537-4213 if you have any questions concerning this meeting request.

Sincerely,


Timothy E. Eastep, Manager
Environment, Land and Water

TEE:pp
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c Messrs: Jerry Schoeppner, NMED
Phil Harrigan, NMED
Bill Olson, NMED
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